IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10712 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARISING @ HARESHKUMAR UMEDJI RAO (BAROT)

Versus

DISTRICT MAGISTRATE

Appearance:

MS DR KACHHAVAH for Petitioner

Mr.Uday Bhatt AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 07/12/2000

ORAL JUDGEMENT

#. The petitioner herein has challenged by way of this petition under Article 226 of the Constitution of India his order of detention passed by the District Magistrate, Banaskantha, Palanpur on 13.7.2000 in exercise of the powers conferred upon him by section 3(1) of the Gujarat

Prevention of Anti-social Activities Act 1985 (PASA Act for short). The petitioner came to be detained in pursuance of the said order on 1.8.2000.

#. The detaining authority on the grounds of detention has relied upon 2 crimes registered against the petitioner under the Bombay Prohibition Act under sections 66-B,65-E, 81 and 83 on 2.5.2000. The detaining authority has considered the investigation carried out by the police in the above said 2 crimes. In addition to this, the detaining authority has also relied upon the statements of 2 witnesses who offered their statements on 17.6.2000 on assurance of anonymity of identity wherein both the witnesses have stated that the petitioner was dealing in illegal liquor and was a head strong person and on suspicion of providing information to the police regarding the petitioner, both the witnesses were beaten by the petitioner so as to disturb the public order and public tranquility. From the above material, the detaining authority came to the conclusion that the petitioner was involved in illegal activity of selling illegal liquor in the society and was therefore harmful to the public. The petitioner was also a head strong person and was an obstruction to public order and hence the detention order came to be passed against him.

#. Learned advocate Ms. Kachhavah for the petitioner and Mr. Uday Bhatt learned AGP for the respondents were heard.

#. From amongst various grounds urged to challenge the order of detention, it was vehemently urged that the privilege claimed by the detaining authority under section (2) of the PASA Act was not genuine and the detention of the petitioner is required to be quashed on this ground alone.

#. Reverting back to the factual aspect of the case, it appears that the statement of witnesses were recorded by the Police Inspector, LCB on 17.6.2000. The statements were verified by the Dy.S.P., Palanpur. It appears that the detaining authority has placed reliance on the verification of Dy.S.P. It is a clear case that the detaining authority has not verified the statement personally. These facts are squarely covered by a decision of this court in Jakirbhai Rahimbhai Nagori vs. District Magistrate, Mehsana & ors. as reported in 1996(1) GLH 300 In Jakirbhai's case (Supra) this Court has placed reliance upon the decision of Division Bench of this Court in the case of Koli Ashwin vs. State of Gujarat in Special Civil Application No.1812 of 1993.

This Court in Jakirbhai's case, relied upon the following observations made in Koli Ashwin's case:

" However, as is well established, for exercising the power under Section 9(2) what is required for a detaining authority is that he must come to a subjective satisfaction himself and for that purpose, he must be able to point out either in the grounds or in the contemporaneous record that he had sufficient material before him to come to that subjective satisfaction. In the instant case, in the aforesaid background of the statement of each of the witnesses, when we turn to the statements for further material, which the detaining authority can make use of for arriving at a subjective satisfaction except for one word "verified" used by the Dy. S.P. who apparently has put it pursuant to an instruction received from the detaining authority for verifying the statement, there is no other material."

#. No where in the grounds of detention the detaining authority observed that there was any contemporaneous record available with him to come to subjective satisfaction and except relying upon the verification made by the Dy.S.P. there is nothing on record to show that any exercise was undertaken to claim privilege under section 9(2) of the PASA Act and in this view of the matter the claim of privilege under section 9(2) was not genuine one. Therefore, the detention order in this case also is vitiated and that the order of detention is required to be set aside.

#. For the reasons as aforesaid the order of detention passed by the District Magistrate, Banaskantha, Palanpur on 13.7.2000 against the petitioner is hereby ordered to be quashed and set aside. The petitioner-Harising alias Hareshkumar Umedji Rao (Barot) is hereby ordered to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule is made absolute.

(J.R.Vora.J)

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